IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2877 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.N.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : YES

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DEVANG CO OPERATIVE HOUSING SOCEITY LTD.

Versus

SUB POST MASTER

Appearance:

MR DHARMESH V SHAH for the Petitioner.

MS PJ DAVAWALA for the Respondents.

CORAM : HON'BLE MR.JUSTICE D.N.PATEL

Date of decision: 14/07/2004

ORAL JUDGEMENT

By way of this petition under Article 226 of the Constitution of India, the petitioner society has

challenged the action on the part of the respondent authorities in not returning the maturity amount of Rs. 60,000/- of Kisan Vikas Patra which the petitioner had purchased on 6th March, 1997. According to the petitioner, even on the date of maturity, i.e. 6th September, 2002, the respondents have not returned the maturity amount of Rs. 60,000/- which includes principal amount of Rs. 30,000/- and interest amount of RS. 30,000/-.

2. The learned counsel appearing on behalf of the petitioner mainly contended that the petitioner is a registered co-operative society registered under Gujarat Co-operative Societies' Act, 1961. had purchased Kisan Vikas Patra of the face value of Rs. 30,000/- from the respondent no. 1 on 6th March, 1997. On the date of maturity, the petitioner society approached the respondent no.1. It is submitted by the learned counsel for the petitioner that the respondent authorities have pointed out the fact that the petitioner society was not entitled to purchase Kisan Vikas Patra under Kisan Vikas Patra Rules, 1988. (hereinafter referred to as KVP Rules). Therefore, the amount of interest was not paid to the petitioner. It is also submitted by the learned counsel for the petitioner that the respondents have already retained and utilised the money of the petitioner for a period of 5.1/2 years. These monies of the petitioner have been retained and used by the respondent authorities, therefore, the interest thereon ought to be paid to the petitioner by the respondents. At the time of issuance of Kisan Vikas Patra, no such irregularity or illegality was ever pointed out by the respondent no.1. Even during the period of 5.1/2 years, the respondent authority has never intimated to the petitioner as to the irregularity in purchase of the said Kisan Vikas Patra and therefore, the respondents should be directed to return the principal amount alongwith interest thereon.

3. The learned Additional Central Government Counsel appearing for the respondents submitted that only the persons or bodies mentioned in Rule 6 of KVP Rules can purchase Kisan Vikas Patras. It is also submitted by her that if Kisan Vikas Patra is purchased or acquired in contravention of the above Rules, then as per Rule 13 of the KVP Rules, the interest shall not be paid by the respondent authorities. Rules 6 and 13 of KVP Rules read as under:

"6. Type of certificates and issue thereof:-(1) The certificate shall be of the following types, namely :-

(a) Single Holder Type Certificates;
(b) Joint "A" type Certificates; and
(c) Joint "B" Type Certificates

(2) (a) A Single Holder Type Certificate may be issued to :
(i) An adult for himself or on behalf of a minor or to a minor
(ii) a trust.

(Rule amended vide MOF (DEA) Notification no. GSR 119(E) dated 8.3.1995 effective from 1.4.1995)

(b) A joint "A" Type Certificate may be issued jointly to two adults payable to both holders jointly or to the survivor.
(c) A joint "B" Type Certificate may be issued jointly to two adults payable to either of the holders or to the survivors."

13. Excess or irregular holdings: (1) Any certificate purchased or acquired in excess or the limits prescribed in these rules or in the old rules or in contravention of these rules shall be encashed by the holder as soon as fact of the holding being in excess of the limit or in contravention of these rules is discovered and no interest shall be paid on either the excess holding or any holding in contravention of these rules. Provided that the holding shall not be considered in excess of the limit prescribed in these rules or in the old rules, if it is due to any of the following reasons, namely :

(a) inheritance;
(b) award by the Government for meritorious services;
(c) survivorship in the case of joint holdings;
(d) statutory devolution, and
(e) nomination-

Provided further that where the Central Government is satisfied that such purchase or acquisition of certificates is due to a bonafide error on the part of the holder thereof, it may authorise payment of simple interest on the face value of the certificate at the same rate as is admissible for the time being in force for the type of saving accounts in the post office savings bank with which such holder is entitled to open under the provisions of the Post Office Savings Account Rules, 1981.

(2) If any interest has been paid or any excess holding or any holding which is in contravention of these rules, it shall be forthwith refunded to the Government failing which, the Government shall be entitled to recover the amount involved from any money payable by the Government to the investor or as an arrear of land revenue." (Emphasis supplied).

4. I have perused the case papers and have also heard the learned counsel for the parties. Rule 6 of KVP Rules does not permit the petitioner society to purchase Kisan Vikas Patras, but the fact remains that such Kisan Vikas Patras have been purchased by the petitioner society on 6th March, 1997. It may be noted that it is always a matter of policy for the Union of India to decide the beneficiaries of the scheme. There is no legal right vested in the petitioner to purchase Kisan Vikas Patra and to earn interest thereon. When the beneficiaries are accurately prescribed by statutory Rules framed by the Union of India, the scope and extent of the said policy cannot be expanded so as to cover the similarly situated persons like the petitioner. There may be many more persons like the petitioner who are not entitled to purchase the Kisan Vikas Patra. The scheme is not meant for all the persons. It is explicitly clear from Rule 6 of the KVP Rules, 1988 that very few and limited persons who are referred in the Rules are entitled to purchase Kisan Vikas Patras. The vires of Rules are not challenged. Once the Rules are not challenged, the simple interpretation of the Rules, ousts the petitioner society from the scope and ambit of Rule 6 of the KVP Rules, 1988. Enough care has been taken by enacting Rule 13 for purchase of Kisan Vikas Patra in contravention of KVP Rules of 1988 Rule 13 has been enacted which unambiguously takes away the right of such unauthorised, improper and irregular purchaser to earn the interest on the principal amount for which Kisan Vikas Patra has been purchased. The function of the Court is to merely interpret the Rules as they are. The learned counsel for the petitioner consistently submitted that some leniency may be shown by this Court to take deviation from the Rules and some interest may be allowed to be given from the respondents by issuing a writ under Article 226 of the Constitution of India, but the same is not permissible under the Rules, 1988.

5. What recourse is opened to the court, when provisions of Act or Rules are explicitly, unambiguously and unequivocally clear, is nicely referred

in the case decided by the Hon'ble Supreme Court in the case of Union of India and another vs. Deoki Nandan Aggrawal, reported in AIR 1992 Supreme Court, 96. Relevant paragraph-14 reads as under:

" It is not the duty of the Court either to enlarge the scope of the legislation or the intention of the legislature when the language of the provision is plain and unambiguous. The Court cannot rewrite, recast or reframe the legislation for the very good reason that it has no power to legislate. The power to legislate has not been conferred on the courts. The Court cannot add words to a statute or read words into it which are not there. Assuming there is a defect or an omission in the words used by the legislature the Court could not go to its aid to correct or make up the deficiency. Courts shall decide what the law is and not what it should be. The Court of course adopts a construction which will carry out the obvious intention of the legislature but could not legislate itself. But to invoke judicial activism to set at naught legislative judgment is subversive of the constitutional harmony and comity of instrumentalities."

6. The proviso to Rule 13 of the Rules of 1988 is also of no help to the petitioner. A plain reading of the proviso to Rule 13 presupposes that there must be a legal holder of Kisan Vikas Patra and thereafter, the Central Government must be satisfied that any purchase of acquisition of Kisan Vikas Patra is due to a bonafide error on the part of the holder thereof, it may award payment of simple interest on the face value of the certificate. Thus, for applicability of the proviso to Rule 13 of the Rules of 1988, there must be authorised, proper and regular holder as per Kisan Vikas Patra Rules, 1988 and there may be a bonafide error of such legal holder of Kisan Vikas Patra in purchase of certificate; for example; if certificates are purchased of the amount than maximum limit prescribed under the Rules or there may be irregularity in issuing fresh certificates in lieu of purchase of old certificates, (under Rule 12 of the Rules of 1988) or there may be an irregularity of holding of certificate of either type "A" or type "B" as referred to in Rule 6 of the Rules. Such type of irregularity committed in purchase or holding of Kisan Vikas Patra by legally authorised holder thereof, then only, he will be entitled to benefit of proviso to Rule 13 of Kisan Vikas Patra Rules, 1988. In the present case, I am of the view that the petitioner society cannot hold or acquire Kisan Vikas Patra and it is not a legal

and authorised holder of Kisan Vikas Patra. Therefore, it is not entitled to benefit of interest as per Rule 13 nor it is entitled to get the benefit of simple interest at the rate prevailing under Post Office Savings Account Rules, 1981. In short, The petitioner is not entitled to get the benefit under the main part of Rule 13 nor under the proviso thereof. A similar question had arisen in Special Civil Application No. 7913 of 1990 wherein National Savings Certificates were purchased by the petitioner who was an association of persons, in which case, this Court vide judgment dated 23rd June, 2004 has held that the said petitioner was not entitled to interest. Rule 4 of National Savings Certificates (VI Issue) Rules, 1981 is akin to Rule 6 of Kisan Vikas Patra Rules, 1988 and Rule 11 of NSC (VI Issue) Rules, 1981 is analogous to Rule 13 of KVP Rules. The present petition is also of similar nature. Thus, the Central Government has maintained consistency in both, NSC (VI Issue) Rules, 1981 and KVP Rules, 1988 and in none of the cases, if the petitioner is not entitled to hold the certificates, then the said petitioner shall also not be entitled to earn the interest thereupon.

7. The learned counsel for the petitioner has also placed reliance on the judgment dated 27th July, 2001 delivered by this Court in Special Civil Application no. 12508 of 2000 which pertains to the irregularity committed in opening of PPF account. It is submitted by him that though there was some irregularity in opening the PPF account, the petitioner in that petition was allowed to earn interest. The said judgment was also confirmed in Letters Patent Appeal and therefore, similarly situated is the case of the petitioner and therefore, the benefit of interest may be extended. I am afraid, this argument holds any water. KVP Rules are explicitly clear. There is hardly any scope of taking any deviation or departure from clear, unambiguous and unequivocal provisions of KVP Rules. In my opinion, what is prohibited by Rules cannot be permitted by this Court.

8. In view of the aforesaid facts and circumstances and clear provisions of Rules, the petitioner is not entitled to earn interest upon the principal amount for which Kisan Vikas Patras are purchased. Nonetheless the petitioner is entitled to get back the principal amount of Rs. 30,000/- only. It is submitted by the learned counsel for the petitioner that vide order dated 15th July, 2003, this Court has directed the respondents to deposit a sum of Rs. 60,000/- in this Court and accordingly, the amount has been deposited in this Court.

9. In the result, there is no substance in the petition and it deserves to be dismissed. Accordingly, the same is dismissed. Rule is discharged with no order as to costs. However, the Registry is directed to allow the petitioner to withdraw, out of aforesaid amount of Rs. 60,000/-, a sum of Rs. 30,000/and allow the respondents to withdraw the remaining amount of Rs. 30,000/-.

10. In the last, the learned counsel for the petitioner requested to stay this judgment for a period of three weeks to approach the higher forum. In view of the aforesaid clear provisions of law, the request is not accepted.

(D.N.Patel,J)

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